

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MABELLE DE LA ROSA DANN,

Defendant.

No. C 08-00390 CW

ORDER DENYING  
DEFENDANT'S MOTION  
FOR A NEW TRIAL AND  
MOTION FOR JUDGMENT  
OF ACQUITTAL

On October 8, 2009, a jury convicted Defendant Mabelle de la Rosa Dann on all five counts in the superseding indictment: conspiracy to commit visa fraud (count one), visa fraud (count two), forced labor (count three), unlawful conduct regarding documents in furtherance of servitude (count four), and harboring an illegal alien for the purpose of private financial gain (count five). At the close of the government's case-in-chief, Defendant orally moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. The Court allowed all counts in the indictment to proceed to the jury. Defendant now moves for a judgment of acquittal as to counts three, four and five, arguing

1 that the evidence presented did not support verdicts on these  
2 claims. Defendant also moves to vacate the judgment of conviction  
3 and for a new trial under Federal Rule of Criminal Procedure 33.

4 DISCUSSION

5 I. Sufficient Evidence To Support The Jury Verdict

6 Federal Rule of Criminal Procedure 29 allows Defendant to  
7 challenge the sufficiency of the evidence underlying a conviction.  
8 The question the court must address is whether, "viewing the  
9 evidence in the light most favorable to the prosecution, any  
10 rational trier of fact could have found the essential elements of  
11 the crime beyond a reasonable doubt." United States v.  
12 Herrera-Gonzalez, 263 F.3d 1092, 1095 (9th Cir.2001) (emphasis in  
13 original and citations and internal quotation marks omitted).

14 As noted above, Defendant challenges counts three through five  
15 of her conviction. The Court addresses each count in turn.

16 A. Count Three: Forced Labor (18 U.S.C. § 1589)

17 The Court instructed the jury on the forced labor count as  
18 follows:

19 The third crime Ms. Dann is charged with is  
20 obtaining forced labor in violation of Section 1589 of  
21 Title 18 of the United States Code. In order for Ms.  
22 Dann to be found guilty of that charge, the government  
23 must prove each of the following three elements beyond a  
24 reasonable doubt:

25 First, Ms. Dann obtained or attempted to obtain the  
26 labor or services of Ms. Pena Canal. The word "obtain"  
27 means to acquire, to procure or to succeed in gaining the  
28 possession of something as a result of some plan,  
endeavor or general course. The word "labor" means work  
or the performance of any particular task or set of  
tasks, and it includes any form of physical or mental  
effort or exertion to perform such work or tasks. The  
word "services" means any conduct, work or duty performed  
for the benefit of another person or thing.

Second, if you find that Ms. Dann obtained the labor  
or services of Ms. Pena Canal, then you must determine  
whether she did so by means of a scheme, plan, or pattern

1 intended to cause Ms. Pena Canal to believe that, if she  
2 did not perform such labor or services, that she or  
another person would suffer serious harm.

3 The term "serious harm" means any harm, whether  
4 physical or non-physical harm, including psychological,  
5 financial, or reputational harm, that is sufficiently  
6 serious, under all the surrounding circumstances, to  
compel a reasonable person of the same background and in  
the same circumstances to perform or to continue  
performing labor or services in order to avoid incurring  
that harm.

7 In determining whether a particular type or certain  
8 degree of harm or coercion was sufficient to obtain Ms.  
9 Pena Canal's labor or services, you should consider Ms.  
10 Pena Canal's individual circumstances, including her age,  
intelligence, education, experience, background, social  
isolation, social status, any inequalities between Ms.  
Pena Canal and Ms. Dann and any reasonable means of  
escape or terminating the relationship.

11 The third element of the crime is that Ms. Dann  
12 acted knowingly. As defined above, an act was done  
"knowingly" if Ms. Dann was aware of the act and did not  
act through ignorance, mistake or accident.<sup>1</sup>

13 Thus, in order for Defendant to be found guilty of forced labor,  
14 the government had to prove that she obtained or attempted to  
15 obtain Ms. Pena Canal's labor or services by prohibited means and  
16 that she acted knowingly.

17 Defendant argues that the government did not provide  
18 sufficient evidence of the second element of forced labor, that Ms.  
19 Pena Cana would suffer "serious harm" if she did not continue to  
20 work for Defendant. The government claims that it presented two  
21 forms of such serious harm: financial and reputational.

22 1. Serious Financial Harm

23 The government argues that Defendant led Ms. Pena Canal to  
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25 <sup>1</sup>Knowingly was defined by the Court in the jury instructions  
26 as follows: "An act was done knowingly if Ms. Dann was aware of the  
27 act and did not act through ignorance, mistake, or accident. The  
28 government is not required to prove that Ms. Dann knew that her  
acts or omissions were unlawful. You may consider evidence of Ms.  
Dann's words, acts, or omissions, along with all the other  
evidence, in deciding whether she acted knowingly."

1 believe that she would suffer the serious financial harm of losing  
2 the wages she had earned, but not received. It is undisputed that  
3 Defendant never paid Ms Canal for her work. In January, 2007, in  
4 addition to failing to pay Ms. Pena Canal for her work, Defendant  
5 began telling Ms. Pena Canal that she owed Defendant a debt of  
6 \$15,000 for all of the expenses Defendant accrued on Ms. Pena  
7 Canal's behalf. This is a significant amount of money to owe an  
8 employer, but is especially considerable when compared to the  
9 Peruvian minimum wage that she was more familiar with -- \$150 per  
10 month. In addition, Defendant required Ms. Pena Canal to sign a  
11 note in March, 2008, which contained a false acknowledgment that  
12 she received payment for her work. In full, the note states

13 I, Zoraida Pena, have received from Ms. Mabelle Dann  
14 the minimum wage in the State of California starting on July  
15 27th, 2007, for the care of her children [names omitted]  
16 from 7:00 a.m. to 8:00 a.m. and from the time they arrive  
17 home from school at 2:30 to 6:00 p.m. In addition, I  
18 receive lodging. I occupy the entire living room for a  
19 value of \$500 in rent. And food, breakfast, lunch, food  
[sic] and dinner every day.

20 In addition to this, I have received some clothes items  
21 and gifts from members of Mabelle's family. Perfumes,  
22 clothes items, shoes, jackets, pants, et cetera. I have  
23 received a yearly total of \$10,200.

24 Trial Exh. 30-T.<sup>2</sup> Defendant must have thought this document was  
25 important because she kept it protected in a plastic sleeve in a  
26 binder that she kept in her room.

27 The jury could make three reasonable inferences from this note  
28 when considered in conjunction with Defendant's false promises to  
29 pay Ms. Pena Canal and the debt Defendant imposed on Ms. Pena  
30 Canal: (1) Defendant had no intention of paying Ms. Pena Canal,

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<sup>2</sup>This note was originally written in Spanish. The English translation was agreed upon by the parties.

1 (2) Defendant had a consciousness of guilt for not paying Ms. Pena  
2 Canal so she wanted to preserve the note to guard against any  
3 possible future charges and (3) Defendant wanted Ms. Pena Canal to  
4 be aware that Defendant would keep this note to deter her from  
5 trying to enforce her rights. Taken together, sufficient evidence  
6 existed for a rational trier of fact to conclude that Defendant  
7 knowingly intended to make Ms. Pena Canal believe that, if she  
8 discontinued working for Defendant, she would suffer serious  
9 financial harm.

10 2. Serious Reputational Harm

11 Sufficient evidence also supports the government's theory that  
12 Ms. Pena Canal continued to work for Defendant to avoid serious  
13 harm to her reputation. Ms. Pena Canal testified that Defendant  
14 repeatedly threatened to tell others that Ms. Pena Canal stole from  
15 her if Ms. Pena Canal left. Although it is not clear whether  
16 Defendant specifically told Ms. Pena Canal that she would report  
17 her to the police and immigration authorities, it is reasonable to  
18 believe that accusing her of a crime implied a threat to report her  
19 to law enforcement authorities. Further, when Ms. Pena Canal  
20 finally left Defendant's employ, Defendant did publicly falsely  
21 accuse Ms. Canal of theft, in the office of Defendant's children's  
22 school. The testimony of Ms. Soto and Ms. Lallagher, two  
23 individuals present at the school when Defendant made her  
24 accusation, supports this claim. They testified that when  
25 Defendant learned that Ms. Pena Canal had left, Defendant announced  
26 that Ms. Pena Canal "took everything," including Defendant's money,  
27 jewelry and keys. Given these facts and Ms. Pena Canal's lack of  
28 English language skills and her illegal status, a rational jury

1 could reasonably conclude that she was fearful of defending herself  
2 against Defendant's accusations.

3 Ms. Pena Canal's actions immediately after leaving Defendant's  
4 employ also demonstrate her fear of serious reputational harm.  
5 After she left, she wrote the following letter to Defendant:

6 Mrs.:

7 Mabell [sic] De la Rosa Dann

8 On today's date I'm delivering to the office at Indian  
9 Valley this key in a duly sealed envelope. Your children  
are safe at the school.

10 I'm leaving after having worked for 2 years, the period of  
11 time that you did not pay for my work, claiming that it  
was the debt for my fare.

12 I have felt mistreated and abused by you. I'm not taking  
13 along my clothing or any of your belongings.

14 I need for you to please bring my passport and my D.N.I.  
(Peruvian Identification) to the school in a sealed  
15 envelope; I asked Linda the secretary to keep for me the  
package that you will deliver on Friday April 17, 2008; I  
will pick it up.

16 Also that you close the account at Washinton [sic] Mutual.  
17 I don't have a Bank passbook or any information on the  
amount of money there is.

18 In the event that you do not want to give me my documents,  
19 I will be forced to deliver a copy of this letter to the  
appropriate authorities.

20 Sincerely,

21 Zoraida Pena

22 Exhibit 31T.<sup>3</sup>

23 This letter is strong evidence of Ms. Pena Canal's state of  
24 mind soon after leaving Defendant. She emphasized the fact that,  
25 after leaving her place of work and residence of two years, she did  
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27  
28 <sup>3</sup>This letter was originally written in Spanish. The English  
translation was agreed upon by the parties.

1 not take any of her own belongings or Defendant's belongings with  
2 her. She arranged her escape in such a way that witnesses could  
3 observe that she brought nothing with her, not even her own extra  
4 clothes. The only items she wanted from Defendant were her own  
5 passport and Peruvian identification. And, she made sure to return  
6 to Defendant, in front of a witness, her only possession of  
7 Defendant's -- a key to Defendant's house.

8 In sum, on a separate basis of reputational harm, a rational  
9 trier of fact could find beyond a reasonable doubt that Defendant  
10 forced Ms. Pena Canal to continue to work for her by threatening to  
11 damage her reputation.

12 II. Count Four: Use of Documents in Servitude (18 U.S.C. § 1592)

13 Defendant was convicted of unlawful conduct regarding  
14 documents in furtherance of servitude in violation of Section 1592  
15 of Title 18 of the United States Code. According to the jury's  
16 verdict, the government proved each of the following three elements  
17 beyond a reasonable doubt:

18 First, Ms. Dann concealed, removed, confiscated or  
19 possessed Ms. Pena Canal's passport or other immigration  
document or government identification document.

20 Second, such act or acts were undertaken in the course  
of committing or with the intent to commit the crime of  
forced labor.

21 And third, that Ms. Dann acted knowingly in doing such  
22 act or acts. As defined above, an act was done "knowingly"  
if Ms. Dann was aware of the act and did not act through  
23 ignorance, mistake or accident.

24 Final Jury Instructions at 12.

25 There is sufficient evidence that Defendant possessed and  
26 concealed Ms. Pena Canal's passport and Peruvian identification.  
27 Although Defendant told Officer Roher that she did not have Ms.  
28 Pena Canal's papers, Special Agent Schuffle testified that he found

1 Ms. Pena Canal's papers in a night stand by Defendant's bed. Also,  
2 as described above, in the letter that Ms. Pena Canal left for  
3 Defendant at the school on April 16, 2008, she asked Defendant to  
4 return her papers to her. If Ms. Pena Canal had access to these  
5 papers in Defendant's apartment, surely she would have brought them  
6 with her when she escaped. Although Defendant received this  
7 letter, she never gave Ms. Pena Canal the papers.

8 There is sufficient evidence that Defendant possessed and  
9 concealed Ms. Pena Canal's papers in order to commit the crime of  
10 forced labor. Ms. Pena Canal testified that Defendant repeatedly  
11 told her that if she was unhappy or wanted to quit, Defendant could  
12 "send her back to Peru." Given these comments and the fact that  
13 Defendant knew about Ms. Pena Canal's illegal status and possessed  
14 her identification papers, a reasonable person could infer that  
15 Defendant knowingly possessed Ms. Pena Canal's papers in order to  
16 commit the crime of forced labor. Thus, sufficient evidence  
17 supports the jury's verdict on this count.

18 III. Count Five: Harboring an Illegal Alien for Private Financial  
19 Gain (8 U.S.C. §§ 1324(a)(1)(A)(iii) and (B)(I))

20 The jury was instructed as to the elements of this charge as  
21 follows:

22 First, Ms. Pena Canal was an alien;

23 Second, Ms. Pena Canal had come to, entered or  
24 remained unlawfully in the United States;

25 Third, Ms. Dann knew or was in reckless disregard  
26 of the fact that Ms. Pena Canal had come to, entered, or  
27 remained unlawfully in the United States;

28 Fourth, Ms. Dann concealed, harbored or shielded  
Ms. Pena Canal for the purpose of avoiding Ms. Pena  
Canal's detection by immigration authorities; and

Fifth, Ms. Dann concealed, harbored or shielded Ms.  
Pena Canal for the purpose of private financial gain.

Final Jury Instructions at 12. Defendant challenges the fourth



1 element. Undisputed evidence shows that Defendant harbored Ms.  
2 Pena Canal in her apartment by providing her shelter. Ms. Pena  
3 Canal testified that she had nowhere else to live in the United  
4 States, from which the jury could reasonably infer that keeping Ms.  
5 Pena Canal in Defendant's apartment facilitated her illegal stay in  
6 the United States.

7 Defendant also undertook several other steps to prevent Ms.  
8 Pena Canal's detection by immigration authorities. For instance,  
9 Defendant limited Ms. Pena Canal's contacts outside of Defendant's  
10 family by forbidding her to communicate with other Spanish  
11 speakers<sup>4</sup> and to leave the home by herself. In one instance,  
12 Defendant drove to the home of Claudia Fetzner, a Spanish-speaker  
13 with whom Ms. Pena Canal had communicated, to express her anger  
14 over the contact. Defendant repeatedly called Ms. Fetzner later  
15 that night and the next morning to chastise her. Ms. Fetzner felt  
16 so threatened by Defendant's anger over the incident that she filed  
17 a police report against Defendant. Defendant's reaction to Ms.  
18 Pena Canal's unauthorized interaction with Ms. Fetzner also shows  
19 that Defendant was concerned about anybody discovering Ms. Pena  
20 Canal's illegal status.

21 Defendant also made efforts to isolate Ms. Pena Canal and  
22 prevent the government from detecting her. Defendant restricted  
23 Ms. Pena Canal's movements by taking away her passport and Peruvian  
24 identification and destroying Ms. Pena Canal's return ticket to  
25 Peru. Defendant also contributed to Ms. Pena Canal's isolation by  
26 destroying her radio and neglecting to teach her English. Further,

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28 <sup>4</sup>Ms. Pena Canal spoke only Spanish.

1 Defendant's repeated reminders to Ms. Pena Canal of her illegal  
2 status also supports an inference that she was knowingly harboring  
3 Ms. Pena Canal. Taking this evidence together, a rational jury  
4 could conclude that Defendant harbored Ms. Pena Cana to avoid  
5 detection by immigration authorities.

6 IV. Motion for a New Trial.

7 Under Federal Rule of Criminal Procedure 33, a district court  
8 may vacate a judgment of conviction and grant a new trial "if the  
9 interest of justice so requires." Fed. R. Crim. P. 33. "The court  
10 is not obligated to view the evidence in the light most favorable  
11 to the verdict and it is free to weigh the evidence and evaluate  
12 for itself the credibility of the witnesses." United States v.  
13 Kellington, 217 F.3d 1084, 1097 (9th Cir. 2000). However, a motion  
14 for a new trial should be granted "only in exceptional cases in  
15 which the evidence preponderates heavily against the verdict."  
16 United States v. Pimentel, 654 F.2d 538, 545 (9th Cir. 1981).  
17 Here, the interest of justice does not warrant a new trial.

18 Defendant argues that Ms. Pena Canal's testimony is entirely  
19 incredible and, because her testimony provided the foundation of  
20 the charges against Defendant, to avoid a miscarriage of justice,  
21 the Court must grant a new trial. Although Ms. Pena Canal's  
22 testimony was central to Defendant's conviction, the "testimony of  
23 the one witness, if believed, [is] sufficient to support [a]  
24 conviction, and the resolution of any question as to [her]  
25 credibility [is] properly entrusted to the jury." United States v.  
26 Gudino, 432 F.2d 433, 434 (9th Cir. 1970). Here, Ms. Pena Canal  
27 testified for two days and the jury was able to evaluate her  
28 credibility. The jury was made aware of Ms. Pena Canal's acts of

1 dishonesty and other evidence that could bear on her credibility,  
2 such as the government benefits she received and the civil lawsuit  
3 that she filed against Defendant. In the end, the jury chose to  
4 credit her testimony. Although the foundation of the government's  
5 case was Ms. Pena Canal's testimony, it presented several other  
6 pieces of supporting evidence: (1) many third party witnesses'  
7 testimony about their interactions with Defendant, (2) documents  
8 recovered from Defendant's home pursuant to a search warrant,  
9 (3) analysis of evidence recovered from Defendant's computer,  
10 (4) bank records and (5) State Department records, including visa  
11 applications submitted by Defendant. In sum, the evidence against  
12 Defendant was credible and came from numerous and varied sources.  
13 The convictions were the result of a fair trial. Accordingly, the  
14 verdicts rendered were not a miscarriage of justice.

## 15 CONCLUSION

16 For the foregoing reasons, the Court denies Defendant's motion  
17 for judgment of acquittal and for a new trial (Docket No. 99).

18 IT IS SO ORDERED.

19 Dated: 12/23/09



20 CLAUDIA WILKEN  
21 United States District Judge  
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